Filed 6/13/16 A. D'Angelo & Sons v. Annex Group CA2/7

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| A. D'ANGELO & SONS, INC.,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>ANNEX GROUP INC.,<br><br>Defendant and Respondent. | B261785<br><br>(Los Angeles County<br>Super. Ct. No. BC533369) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert H. O'Brien, Judge. Reversed with directions.

Franck & Associates, Herman Franck and Elizabeth Betowski for Plaintiff and Appellant.

Buchalter Nemer, Mark T. Cramer and Pooya E. Sohi for Defendant and Respondent.

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## INTRODUCTION

Plaintiff A. D'Angelo & Sons, Inc. filed a first amended complaint against defendant Annex Group Inc. that contained two causes of action—the first for intentional interference with contractual relations; and the second for intentional interference with prospective economic advantage. The trial court sustained a demurrer to both causes of action without leave to amend and separately granted a motion to strike various allegations as being improper or irrelevant. Plaintiff appeals from a judgment of dismissal in favor of defendant. While we agree with the trial court's ruling in sustaining the demurrer to the second cause of action (for intentional interference with prospective economic advantage), we disagree with the ruling in sustaining the demurrer to the first cause of action (for intentional interference with contractual relations). We further find that plaintiff has forfeited its challenge to the ruling on the motion to strike, as it has failed to address the merits of that motion on appeal. We therefore reverse the judgment with directions consistent with the above conclusions.

## FACTUAL BACKGROUND[1]

### A. GENERAL ALLEGATIONS OF CONTRACT INTERFERENCE

Plaintiff is in the business of selling automotive paint and other products to body shops. Plaintiff had exclusive supply agreements with some of those shops, which required paying them "prebates" (i.e., upfront payments to secure the contracts). Larry Huckman worked for plaintiff as a salesperson for over 20 years and was the "point man on many of these accounts." In addition to being a salesman, Huckman was the sales manager of a company store in Glendale, California. In his position with the company, Huckman knew about the existence of the exclusive contracts because he was responsible for overseeing compliance with the contract terms.

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[1] On demurrer, "'[w]e accept as true the properly pleaded material facts but do not assume the truth of contentions, deductions or conclusions of fact or law. [Citations.]'" (*Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1374.)

In October 2013, defendant hired Huckman by offering to pay him an "exorbitant salary" that was "[three] times the pay rate" in the industry and by providing him with a new truck. Soon after being hired, Huckman began aggressively contacting plaintiff's customers, including those Huckman knew had an exclusive supply contract with plaintiff. During October and November, plaintiff received calls from body shop customers explaining that Huckman had made sales presentations offering lower prices for products. Huckman also told these customers that "if there was any legal fallout from leaving [plaintiff] and going to [defendant], that [defendant] would 'cover it.'"

On October 29, 2013, plaintiff's counsel wrote to defendant's in-house counsel about the matter, stating that Huckman was "calling on his former accounts" who had exclusive supply agreements with plaintiff and "inducing these body shops to breach and violate the exclusive supply provisions" of these agreements. Plaintiff's counsel advised that Huckman's conduct amounted to intentional interference with contractual relations and prospective economic advantage. He demanded that defendant pay damages for this conduct and "cease and desist from calling on body shops that are known to have exclusive supply agreements with" plaintiff. Defendant's counsel responded with a short, dismissive email, directing plaintiff's counsel to "stop harassing [her] and [her] client with [his] baseless threats."[2]

Despite the request to "cease and desist," defendant continued its marketing campaign to pursue customers "known to have exclusive supply agreements with [p]laintiff." To entice these customers to breach their contracts with plaintiff, defendant offered them "higher discounts, new up front monies, [and] a promise that [defendant's] legal department will take care of any legal fall-out from the violation of their exclusive supply contracts with [plaintiff]."

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[2] Plaintiff's vice-president in charge of business development, Mark D'Angelo, had previously confronted defendant's chief executive officer, Shervin Darvish, about defendant's interference with plaintiff's exclusive supply agreements. Darvish responded, "that's business."

## B. SPECIFIC AGREEMENTS

The first amended complaint described the terms of several exclusive supply contracts with which defendant allegedly interfered.

First, plaintiff alleged that it had an exclusive supply contract with Patterson's Collision Center. Under the contract, plaintiff made "a onetime Prebate payment . . . of $95,000.00 . . . in consideration for" the customer's agreement to purchase $806,000 of products from plaintiff "for all its refinishing needs." According to the purchase-requirement provision, "Customer agrees to purchase . . . a Minimum of 100% of its Automotive Refinish Products from [plaintiff] . . . ." The contract also contained a termination provision, stating that the agreement could not be terminated without cause. Huckman had "full knowledge" of this contract.

In December 2013, Patterson's Collision Center advised plaintiff that it would no longer purchase paint and supplies from plaintiff because it was going to "go with [Huckman]" and purchase these items from defendant. At that time, Patterson's Collision Center had only purchased $199,598.82 in product from plaintiff, well below the $806,000 minimum requirement, and did not return the $95,000 prebate.

Second, plaintiff alleged that it had an exclusive supply contract with Sunset Auto Crafters. Under that contract, plaintiff paid a cash advance (or prebate) of $87,500 in exchange for an exclusive agreement requiring Sunset Auto Crafters to purchase all of its automobile refinishing materials—up to a minimum of $1.1 million in product—through plaintiff. The prebate "represents the consideration for the exclusive purchasing requirement and is non-refundable provided Sunset Auto Crafters fully performs its obligations under this agreement." The agreement provided that it could only be terminated for cause, and then only after the party receiving notice of the cause has a 60-day opportunity "to cure the alleged cause."

In January or February 2014, Huckman convinced Sunset Auto Crafters to buy its automobile refinishing materials from defendant rather than plaintiff even though Sunset Auto Crafters had not yet satisfied the $1.1 million minimum threshold and had not returned the prebate. When he engaged in this wrongful conduct, Huckman knew that

there was an exclusive agreement between Sunset Auto Crafters and plaintiff. Sunset Auto Crafters stopped purchasing from plaintiff without notifying plaintiff that it had cause to terminate the contract and without giving plaintiff an opportunity to cure any alleged default.

Third, plaintiff alleged that it had an exclusive supply contract with Gordon's of Torrance, requiring Gordon's of Torrance to purchase a minimum of $350,000 in products from plaintiff in exchange for a $5,000 prebate. The agreement could only be terminated for cause after giving the other party notice and an opportunity to cure the alleged default.

In December 2013, Huckman knew about plaintiff's exclusive agreement with Gordon's of Torrance. Despite this knowledge, Huckman convinced Gordon's of Torrance to stop purchasing from plaintiff and to start buying from defendant. Gordon's of Torrance had not yet purchased the amount of products required under the agreement, nor did it invoke the notice-and-cure provision of the contract or return the prebate.[3]

## PROCEDURAL BACKGROUND

In its original complaint, filed in January 2014, plaintiff asserted causes of action for interference with contractual relations, interference with prospective economic advantage, violation of the Uniform Trade Secret Act (Civ. Code, § 3426 et seq.), and unfair competition (Bus & Prof. Code, § 17200). Defendant demurred on the grounds of uncertainty, preemption, and failure to state a claim. Defendant also filed a motion to

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[3] Plaintiff also alleged that it had an "exclusive supply contract" with Howard Brown & Sons Auto Body. Though referring to the contract as being "exclusive," plaintiff acknowledged that the contract was a "month to month written agreement" that "may be terminated at any time by either party" on 15 days' notice. Plaintiff attached a copy of the one-page agreement to its first amended complaint, and the agreement does not purport to bind the contracting parties to an exclusive arrangement. The trial court struck these allegations from the first amended complaint pursuant to the motion to strike. As we discuss below, plaintiff has forfeited its challenge to the motion to strike, including the order striking the allegations that plaintiff had an exclusive contract with Howard Brown & Sons Auto Body.

strike various allegations of the complaint, including the request for punitive damages, on the grounds they were improper or irrelevant. Plaintiff opposed the demurrer and motion to strike and requested leave to amend. The trial court sustained the demurrer in its entirety, granted leave to amend the complaint, and declined to address the merits of the motion to strike in light of its ruling on the demurrer.

In its first amended complaint, filed on June 30, 2014, plaintiff retained only two causes of action—i.e., its first cause of action for intentional interference with contractual relations; and its second cause of action for intentional interference with prospective economic advantage. Defendant demurred on the grounds of uncertainty and failure to state a claim. Defendant argued that the amended pleading was uncertain in failing to specify the actions taken to interfere with the specified contracts and in failing to allege that it knew the status and terms of those contracts. Defendant also argued that the cause of action for intentional interference with prospective economic advantage failed as a matter of law because plaintiff did not allege a wrongful act independent of the alleged interference. In addition to the demurrer, defendant filed a motion to strike improper or irrelevant allegations, including the request for punitive damages (which defendant claimed was not supported by the alleged facts). Plaintiff opposed the demurrer and motion to strike.

The trial court overruled the demurrer for uncertainty, but sustained the demurrer for failure to state a claim without leave to amend. As to the cause of action for intentional interference with contractual relations, the court found that plaintiff alleged insufficient facts showing Huckman's knowledge of the contracts. As to the cause of action for intentional interference with prospective economic advantage, the court found that the allegations did not establish an independent wrongful act. The court also granted the motion to strike (without specifying reasons). A judgment of dismissal was entered on December 9, 2014, and plaintiff timely appealed.

## DISCUSSION

### A. THE DEMURRER

A demurrer tests the legal sufficiency of the facts alleged in a complaint to determine if they state a viable cause of action. (*Chapman v. Skype Inc*. (2013) 220 Cal.App.4th 217, 225.) In considering a demurrer, a court must read the complaint as a whole and accept as true all properly pleaded allegations. (*Ibid*.) Our review of a trial court's order sustaining a demurrer is de novo, while our review of a denial of leave to amend is for abuse of discretion. (*Ibid*.) Such discretion is abused if there is "a reasonable probability" that a plaintiff can cure the defect by amendment. (*Id*. at p. 226.) Applying this standard of review, we find that the trial court erred only in sustaining the demurrer to the first amended complaint as to the contractual interference claim.

1. *Intentional Interference with Contractual Relations*

To prove a claim for interference with a contractual relationship, a plaintiff must show: (1) the existence of a valid contract between plaintiff and a third party; (2) the defendant knew of the contract; (3) defendant intentionally acted to induce a breach or disrupt the contractual relationship; and (4) there was an actual breach or disruption of the relationship that resulted in damage. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126 & fn. 2; accord, *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55 (*Quelimane*).)

In the first amended complaint, plaintiff alleged that it had valid contracts with third parties (Patterson's Collision Center, Sunset Auto Crafters, and Gordon's of Torrance); Huckman knew of these contracts and their material terms as an ex-employee; defendant intentionally induced the third parties to breach the contracts by offering them payments, discounts, and promises of a legal defense if sued; and the third parties breached the contracts causing damages in the form of lost profits. Therefore, plaintiff alleged a cause of action for intentional interference with contractual relations. (*Quelimane, supra,* 19 Cal.4th at pp. 56-57.)

Defendant claims plaintiff "never alleged the requisite facts in support of the knowledge and intent elements of an interference claim." Specifically, defendant argues

that "[plaintiff] concedes that exclusivity ended with respect to each contract once certain sales targets were reached, and [plaintiff] does not allege that [defendant] (or Huckman) knew that sales targets had not been reached at the time of the alleged interference." Therefore, according to defendant, plaintiff failed to allege that defendant had sufficient knowledge of the terms and status of the contracts to form the intent to interfere with them.

In support of its claim, defendant relies on *Davis v. Nadrich* (2009) 174 Cal.App.4th 1, a summary judgment case involving a claim of interference with the law partnership of Davis & Heubeck. Several years after the two lawyers had entered into the partnership, they stopped making money in 2003. Nadrich, an attorney, met Heubeck in 2004 and agreed to refer cases to him on the condition that the referrals would be to Heubeck solely rather than to the Davis & Heubeck firm. (*Id*. at p. 4.) In his suit against Nadrich, Davis argued that the referrals interfered with the partnership agreement. In affirming summary judgment in Nadrich's favor, the court found that Davis had not provided evidence that the partnership agreement precluded Heubeck's individual acceptance of the referrals. The court further found that "the uncontroverted facts demonstrate that Nadrich cannot be liable for interference with the Davis/Heubeck contract because he had no knowledge that Davis & Heubeck was a viable partnership, accepting cases." (*Id*. at p. 11.)

Unlike in *Davis*, plaintiff has alleged sufficient facts to survive a demurrer on its claim for interference with contractual relationships. Plaintiff alleged that Huckman, acting as defendant's agent, knew about the existing contracts between plaintiff and its customers. Through his long employment with plaintiff as a salesman and as a supervisor responsible for implementing the contracts, Huckman had knowledge of their terms and status. At the pleading stage of the litigation, this allegation (along with the

other allegations of contractual interference) is sufficient to move the case into the next phase of litigation.[4]

2. *Intentional Interference with Prospective Economic Advantage*

To prove a claim for intentional interference with prospective economic advantage, a plaintiff must show: "(1) an economic relationship between the plaintiff and a third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) an intentional act by the defendant, designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's wrongful act, including an intentional act by the defendant that is designed to disrupt the relationship between the plaintiff and a third party." (*Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 944.) As part of its burden, "[t]he plaintiff must also prove that the interference was wrongful, independent of its interfering character. [Citation.] '[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.' [Citation.]" (*Ibid.*; see also *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393 (*Della Penna*).)

According to plaintiff, "[t]he prospective economic damages claim[] [in the second cause of action] seeks damages from the [expected] renewal of the exclusive supply agreements alleged in the first cause of action." In sustaining the demurrer to this claim, the trial court found that plaintiff failed to allege, as required, an independent wrongful act. On appeal, plaintiff argues that "[t]he specification of an intentional tort in the first cause of action, supplies the necessary independent wrongful act in the second cause of action." In support of this argument, plaintiff asserts: "A series of cases

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[4] Defendant relies on another summary judgment case that is likewise distinguishable. (See *Winchester Mystery House, LLC v. Global Asylum, Inc.* (2012) 210 Cal.App.4th 579, 597 [insufficient evidence to show that the defendant knew that its actions would interfere with the plaintiff's exclusive contract with a third party].)

show[s] that the intentional interference with contractual relations constitutes an independent wrongful act for purposes of establishing this required . . . element for the claim of interference with prospective economic advantage."

None of the cases cited by plaintiff supports its assertion. These cases do state that intentional interference with existing contracts constitutes a wrongful act *for purposes of a claim for interference with contractual relations*, but they do not hold that such interference constitutes an independent wrongful act for purposes of a separate claim for interference with prospective economic advantage. Rather, when discussing the fact that interfering with an existing contract is an independent wrongful act, the courts were distinguishing the two claims that plaintiff seeks to conflate. In *Quelimane*, for example, the court stated: "As we explained in *Della Penna* . . . , it is necessary to distinguish the tort of interference with an existing contract because the exchange of promises which cements an economic relationship as a contract is worthy of protection from a stranger to the contract. Intentionally inducing or causing a breach of an existing contract is therefore a wrong in and of itself. Because this formal economic relationship does not exist and damages are speculative when remedies are sought for interference in what is only prospective economic advantage, *Della Penna* concluded that some wrongfulness apart from the impact of the defendant's conduct on that prospect should be required. Implicit in the *Della Penna* holding is a conclusion that this additional aspect of wrongfulness is not an element of the tort of intentional interference with an existing contract." (*Quelimane*, *supra*, 19 Cal.4th at pp. 55-56.)

Neither *Quelimane* nor *Della Penna* suggested that a party asserting a claim for intentional interference with existing contracts can rely on the interference element of that claim to satisfy the independent wrongful act requirement for a claim of interference with prospective economic advantage. In fact, the California Supreme Court cautioned against adopting an analysis that blurred the distinction between the two claims: "A doctrine that blurs the analytical line between interference with an existing business contract and interference with commercial relations *less* than contractual is one that invites both uncertainty in conduct and unpredictability of its legal effect. The notion

that inducing the breach of an existing contract is simply a subevent of the 'more inclusive' class of acts that interfere with economic relations, while perhaps theoretically unobjectionable, has been mischievous as a practical matter. Our courts should, in short, firmly distinguish the two kinds of business contexts, bringing a greater solicitude to those relationships that have ripened into agreements, while recognizing that relationships short of that subsist in a zone where the rewards and risks of competition are dominant." (*Della Penna*, *supra*, 11 Cal.4th at p. 392; see *Shida v. Japan Food Corp.* (1967) 251 Cal.App.2d 864, 867 [finding no "actionable wrong to induce [third party] not to renew its agreement with [the] plaintiff" absent showing of "improper means"].)

The trial court was therefore correct in sustaining the demurrer to the second cause of action. "[A] plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful 'by some measure beyond the fact of the interference itself.' [Citation.]" (*Della Penna*, *supra*, 11 Cal.4th at pp. 392-393, fn. omitted; accord, *Crown Imports, LLC v. Superior Court* (2014) 223 Cal.App.4th 1395, 1404 ["'a plaintiff must plead and prove that the conduct alleged to constitute the interference was independently wrongful, i.e., unlawful for reasons other than that it interfered with a prospective economic advantage'"].) Plaintiff did not allege an independent wrongful act in its first amended complaint and has not shown that it is capable of doing so if granted leave to further amend.[5]

**B. THE MOTION TO STRIKE**

The trial court also granted defendant's separate motion to strike. In that motion, defendant moved to strike allegations supporting a request for punitive damages, allegations that plaintiff's contract with Howard Brown & Sons Auto Body, Inc. was

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[5] When asked at oral argument whether he could allege an independent wrongful act other than the act of interference if granted leave to amend, plaintiff's counsel stated that he would not be able to do so.

exclusive, and allegations of interference with "other [unspecified body] shops in the past."

In its opening brief on appeal, plaintiff does not address the specific allegations of the complaint that were ordered stricken. Instead, plaintiff conclusorily asserts that the trial court's ruling on the motion to strike was based on its ruling on the demurrer. Based on this assertion, plaintiff provides no separate argument challenging the propriety of the ruling on the motion to strike. Plaintiff simply states: "Based on the argument set forth with respect to the particulars of each element of each cause of action, and the particulars about the issues found by the court to be missing [knowledge of contract; independent wrongful act], it was prejudicial error/abuse of discretion for the trial court to grant the motion to strike."[6]

By failing to address the separate issues raised by the motion to strike, plaintiff has forfeited its claim that the trial court erred in granting it. "'Perhaps the most fundamental rule of appellate law is that the judgment [or order] challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error.' [Citation.]" (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; accord, *Jewish Community Centers Development Corp. v. County of Los Angeles* (2016) 243 Cal.App.4th 700, 714.) "'To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]' [Citation.] 'Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.' [Citation.] 'Hence, conclusory claims of error will fail.' [Citation.]" (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457.)

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6 In its response brief, defendant pointed out that plaintiff had failed to address the substance of the motion to strike. In its reply brief, plaintiff argued that we should not consider the merits of the trial court's ruling, but instead should remand the matter to the trial court. However, the judgment dismissing the case incorporates the trial court's ruling on both the demurrer and the motion to strike. Thus, both orders are before us on appeal. (*Jackson v. Rogers & Wells* (1989) 210 Cal.App.3d 336, 341.)

Accordingly, plaintiff's claim that the trial court erred in granting the motion to strike is forfeited. The motion to strike raised distinct issues from those presented in the demurrer, and plaintiff has not separately addressed, much less demonstrated, that the trial court's ruling on the motion to strike was erroneous.[7]

## DISPOSITION

The judgment of dismissal is reversed. The trial court is directed to vacate its order sustaining defendant's demurrer in its entirety and enter a new order overruling the demurrer as to plaintiff's first cause of action for intentional interference with contractual relations and sustaining without leave to amend the demurrer as to plaintiff's second cause of action for intentional interference with prospective economic advantage. The trial court's ruling on the motion to strike is affirmed. The parties are to bear their own costs on appeal.

BLUMENFELD, J.*

We concur:

ZELON, Acting P. J. SEGAL, J.

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[7] Defendant has requested that we take judicial notice of court records in *A. D'Angelo & Sons, Inc. v. Howard Brown & Sons, Inc*., Los Angeles Superior Court case No. BC555309, sustaining the defendant's demurrer in that case without leave to amend. We deny the request because these records are not material to our decision in light of our conclusion that plaintiff has forfeited its challenge to the trial court's ruling on the motion to strike (including the order striking the allegations about Howard Brown & Sons Auto Body).

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.